



CASE CLIPS

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CRIMINAL LAW ISSUE

LOCKETT v. STATE, No. 02S03-0004-CR-232, ___ N.E.2d ___ (Ind. May 21, 2001).
DICKSON, J.

Charged with carrying a handgun without a license as a class C felony, [footnote omitted] the defendant-appellant brought this interlocutory appeal challenging the denial of his motion to suppress the handgun seized by police during a routine traffic stop. The Court of Appeals reversed, finding that a police officer may not as matter of routine practice question about the presence of weapons during a traffic violation stop. Lockett v. State, 720 N.E.2d 762 (Ind. Ct. App. 1999). We granted transfer and now affirm the trial court, holding that the Fourth Amendment does not prohibit police from routinely inquiring about the presence of weapons.

....
The defendant's motion to suppress claimed that the search of his vehicle violated the Fourth Amendment to the United States Constitution and Article 1, Section 11, of the Indiana Constitution. In neither the motion nor the supporting brief did the defendant argue that the standard under the Indiana Constitution is different from that under the United States Constitution. . . . Because the defendant presents no authority or independent analysis supporting a separate standard under the state constitution, any state constitutional claim is waived. [Citations omitted.] . . .

....
The federal circuits are divided as to whether the Fourth Amendment permits an officer during a traffic stop to ask questions unrelated to the purpose of the stop. [Citations omitted.]

In the present case, the officer validly stopped the defendant's vehicle for a traffic infraction. When the officer approached the vehicle, he smelled alcohol, and this prompted the officer to investigate whether the driver was intoxicated. During this investigation, the officer asked the defendant whether he had any weapons. The question was justified by police safety concerns, and it did not materially extend the duration of the stop or the nature of the intrusion. . . .

.... [O]fficer Bonar's traffic stop of the defendant, the officer's request that the defendant exit the car, and the officer's questioning the defendant regarding weapons did not constitute a custodial interrogation. This was a conventional traffic stop, and no Miranda warnings were required as the defendant was not in custody.

....
SHEPARD, C. J., and BOEHM, and SULLIVAN, JJ., concurred.

RUCKER, J., filed a separate written opinion in which he concurred in the result as follows:

I agree the trial court correctly denied Lockett's motion to suppress because the record

shows that once Lockett was ordered out of his car the officer observed a handgun protruding from under the driver's seat. . . .

[I] disagree with the majority's conclusion that an officer may, as a matter of routine practice, ask a driver stopped for a traffic violation if he has a weapon in the vehicle or on his person. Rather, it is my view that the Fourth Amendment mandates that an officer have an objectively reasonable safety concern before making such an inquiry.

. . . .

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